

Kumar (Migration) [2017] AATA 3089 (24 May 2017)

DECISION RECORD

DIVISION:	Migration & Refugee Division
APPLICANT:	Mr Narinder Kumar
CASE NUMBER:	1611014
DIBP REFERENCE(S):	CLF2014/110263
MEMBER:	Hugh Sanderson
DATE:	24 May 2017
PLACE OF DECISION:	Sydney
DECISION:	The Tribunal affirms the decision not to grant the applicant a Partner (Temporary) (Class UK) visa.

Statement made on 24 May 2017 at 9:38am

CATCHWORDS

Migration – Partner (Temporary) (Class UK) – Subclass 820 (Spouse) – Valid marriage – Financial aspects – Joint bank account – Money transfers to the Sponsor – Sponsor has maintained her financial affairs separate from the applicant – Live separately – Limited evidence of joint social activities – No evidence of the applicant's relationship with the sponsor's child – Sponsor did not attend the hearing – Lack of commitment – No compelling and compassionate reasons

LEGISLATION

Migration Act 1958, s 5F

Migration Regulations 1994, r 1.15A Schedule 2 cls 820.211, 820.221 Schedule 3 criteria

CASES

Babicci v MIMIA (2005) 141 FCR 285

MZYPZ v MIAC [2012] FCA 478

Waensila v MIBP [2016] FCAFC 32

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision of a delegate of the Minister for Immigration on 1 July 2016 to refuse to grant the applicant a Partner (Temporary) (Class UK) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant applied for the visa on 8 August 2014 on the basis of his relationship with his sponsor. At that time, Class UK contained only one subclass: Subclass 820 (Partner (Temporary)). The criteria for the grant of this visa are set out in Part 820 of Schedule 2 to the Migration Regulations 1994 (the Regulations).
3. The delegate refused to grant the visa on the basis that the visa applicant did not satisfy cl.820.211(2)(a) because the delegate was not satisfied the applicant was the spouse, as defined in s.5F of the Act, of the sponsoring partner. The delegate also found that the applicant did not meet the criteria in cl.820.211(2)(d)(ii) because the applicant did not hold a substantive visa and did not meet the Schedule 3 criteria. The delegate was not satisfied there were compelling reasons for not applying the Schedule 3 criteria.

BACKGROUND

4. The applicant is a citizen of India and is currently 31 years old. At the time of the application, his parents and two siblings lived in India. He first arrived in Australia in 25 June 2009 holding a subclass 572 Student visa. His last student visa expired on 13 November 2012. He has not held a substantive visa since that date. The applicant applied for a further Student visa, however this application was refused by the Department and that decision was affirmed on review before the Tribunal (differently constituted) on 25 March 2014. The applicant then sought Ministerial Intervention which was not considered. The applicant was previously in a relationship with Dawinder Kaur, however, that relationship ended when Ms Kaur returned to India in 2013.
5. The sponsor of the applicant is Jadye Matthews. She was born in Australia and is an Australian citizen. She is currently 22 years old. She has a child, Malakai Piliumi, who is currently six years old.
6. The parties claimed that they first met each other on 6 July 2013. They claimed their relationship became serious in November or December 2013 and the applicant proposed marriage to the sponsor of 31 December 2013. The sponsor agreed to be married and they were married on 5 February 2014. They started living together after their marriage.
7. The Department wrote to the applicant 4 February 2016 noting he did not hold a substantive visa at the time of the application and did not meet the Schedule 3 criteria. He was invited to provide compelling reasons for not applying those criteria. He was requested to provide further information to show that he was in a genuine and continuing relationship with the sponsor.
8. The parties provided a statement where it was claimed that their relationship had grown over the past two years and they were committed to each other. They had family and friends who support them and they pool their financial resources towards their household. The applicant claimed that he had come to know the sponsor and her child better and they have become closer to him.

9. The delegate who considered the application first considered whether the applicant was the spouse of the sponsoring partner as defined in s.5F of the Act. The delegate noted the following issues:
- The joint bank statement showed deposits from the applicant's income and transfers to the sponsor's bank account, however there was nothing to indicate any pooling of financial resources and the details of the sponsor's bank account were not provided;
 - There was little other information as to the financial aspects of the relationship;
 - The marriage certificate stated the parties were living at an address at Leumeah, however, the bank statements indicated the applicant was living in Ingleburn;
 - The sponsor's birth certificate was posted to her on 15 May 2014 at an address at St Clair;
 - There was no information which would indicate the parties were living together or that the applicant was assisting in the care of the sponsor's child;
 - There was limited information that the parties had participated in any social activities together;
 - Photos of the marriage ceremony indicated a very small event with only the applicant the sponsor and the marriage celebrant present;
 - The statements from friends of the applicant provided limited details of any relationship;
 - No statements had been provided by the family of the sponsor; and
 - There was no evidence of the parties being committed to any long-term relationship.
10. Taking these factors into account, the delegate was not satisfied that the applicant was in a genuine and continuing relationship or was the spouse of the sponsoring partner as defined in s.5F of the Act. Accordingly, the delegate found that the applicant did not meet the criteria in cl.820.211(2)(a).
11. The delegate then considered whether there were compelling reasons for not applying the Schedule 3 criteria. The delegate noted the following issues:
- The fact that the parties are in a genuine relationship is the basic requirement for any Partner visa application; and
 - There was no information provided as to any compelling reasons for not applying the Schedule 3 criteria.
12. Accordingly, the delegate found that the applicant did not meet the criteria in cl.820.211(2)(d)(ii). The delegate found that the applicant did not meet any of the alternate criteria in cl.820.211 and refused the application.

INFORMATION TO THE TRIBUNAL

13. The applicant did not provide any further information to the Tribunal apart from a copy of the Department's decision. The Tribunal invited the applicant to a hearing before the Tribunal and requested the sponsor attend the hearing. The applicant initially responded to the

hearing invitation by stating that the sponsor would not attend. The applicant's agent then wrote to the Tribunal to say that the sponsor's son was undergoing surgery and therefore she would not be able to attend. The Tribunal wrote to the applicant noting that it would consider a postponement of the hearing and requested a medical certificate to confirm the sponsor's son's medical condition and the availability of the sponsor. The applicant's agent then responded by stating that the sponsor would be able to attend the hearing as planned.

14. The applicant and the sponsor did not arrive at the Tribunal until two hours after the scheduled start time of the hearing. Accordingly, the hearing was postponed to another day.
15. The applicant appeared before the Tribunal on 22 May 2017 to give evidence and present arguments. The sponsor did not attend the hearing. The Tribunal hearing was conducted with the assistance of an interpreter in the Punjabi and English languages, however, the applicant was able to speak English and the interpreter was not required. The applicant was represented in relation to the review by his registered migration agent who did not attend the hearing.
16. The applicant said that the sponsor did not attend the hearing because "the kid" was sick and she had to stay at home to look after him. He did not know what was wrong with the sponsor's child. He said that the sponsor had been living with her parents at Mount Druitt for at least the last seven months. He said that he was living at a separate place and they had not lived together for seven months, but they still see each other. The Tribunal commented that the fact the sponsor did not attend indicated she was not committed to the relationship and that it might be concluded the parties were not in a genuine relationship. The applicant accepted this comment. The applicant did not request a postponement of the hearing to allow the sponsor to attend with the applicant before the Tribunal.
17. The applicant said that he and the sponsor had been living together at Ingleburn after they were married for about two years and then the sponsor had moved to her parents. The Tribunal noted that this would mean that she had been living with her parents for more than one year. The applicant agreed. The applicant said that she had to live with her parents to have somebody to look after "her kid". The Tribunal asked the applicant if the sponsor was receiving Centrelink benefits as a single parent. The applicant said that he had told the sponsor to change this but she didn't do anything.
18. The applicant said that he and the sponsor started living together after they were married. He said that the address at Leumeah on the marriage certificate was where he had been living and the sponsor would visit him there. He said that the sponsor was living at another address. The Tribunal noted the sponsor's birth certificate provided by the applicant to the Department was sent to an address at St Clair. The Tribunal asked the applicant to explain why the sponsor would have arranged for her birth certificate to be sent to an address at St Clair, three months after they were married, when he was claiming that they were living together in Ingleburn. The applicant did not provide a response. The Tribunal put to the applicant that the information indicated that the parties had never lived together and they were not in a genuine relationship. The applicant did not provide a response.
19. The applicant said that he calls his parents every day and he has a good relationship with them. He said that he misses them and would like to go back and visit them. He said that he got financial support from his extended family to be able to apply for the Student visa. He said that his father has a shop in India.
20. The Tribunal noted the applicant did not hold a substantive visa at the time of the application and did not meet the Schedule 3 criteria. The applicant was invited to provide compelling reasons for not applying those criteria.

21. The applicant said that he did not want to go back to India. He said that he liked Australia and had been here for a number of years. He did not provide any other reason for not applying the Schedule 3 criteria.
22. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.

CONSIDERATION OF CLAIMS AND EVIDENCE

23. The issue in the present case is whether the applicant was at the time of the application and continues to be the spouse of the sponsoring partner. A further issue is whether the applicant meets the Schedule 3 criteria and, if he does not, whether there are compelling reasons for not applying those criteria.

WHETHER THE PARTIES ARE IN A SPOUSE OR DE FACTO RELATIONSHIP

24. Clauses 820.211(2)(a) and 820.221 require that at the time the visa application was made, and at the time of this decision, the applicant is the spouse or de facto partner of an Australian citizen or Australian permanent resident or an eligible New Zealand citizen. In the present case the applicant claims to be the spouse of the sponsor who is an Australian citizen.
25. 'Spouse' is defined in s.5F of the Act and provides that a person is the spouse of another where the two persons are in a married relationship. Persons in a married relationship must be married to each other under a marriage that is valid for the purposes of the Act, there must be a mutual commitment to a shared life as husband and wife to the exclusion of all others, the relationship must be genuine and continuing, and the couple must live together, or not live separately and apart on a permanent basis: s.5F(2)(a)-(d). In forming an opinion as to these matters, regard must be had to all of the circumstances of the relationship. This includes evidence of the financial and social aspects and the nature of the parties' household and their commitment to each other as set out in r.1.15A(3), which is extracted in the attachment to this decision.

ARE THE PARTIES VALIDLY MARRIED?

26. If the parties are validly married, they may meet the requirements of a spousal relationship, but not a de facto relationship. The parties were married on 5 February 2014. There is nothing to indicate that the marriage is not valid. On the evidence, the parties were married to each other under a marriage that is valid for the purposes of the Act as required by s.5F(2)(a).

ARE THE OTHER REQUIREMENTS FOR A SPOUSAL RELATIONSHIP MET?

FINANCIAL ASPECTS

27. There is little information that would indicate the financial aspects of the relationship indicated the parties were or are in a genuine relationship. The applicant provided to the Department details of a joint bank account open in the names of the parties. This indicates money being deposited into the account from the applicant's wages. Money appears to be transferred from that account to the sponsor, however, details of the sponsor's bank account were not provided. The account does not indicate that the parties are pooling their financial resources or that they have any joint liabilities or sharing in the day-to-day household expenses.

28. The applicant said the sponsor had her own bank account. He did not know the details of this account. No copies of the sponsor's bank account were provided. The applicant indicated the sponsor was receiving a Centrelink payment. When questioned by the Tribunal, he indicated that this was for a single person and that he had asked the sponsor to change this but she did not do anything. This indicates the sponsor has maintained her financial affairs separate from the applicant.
29. The applicant said that the sponsor had been living with her parents for the last seven months. This is discussed further below. There is nothing to indicate that at the time of this decision the applicant is providing any financial support to the sponsor or that their financial affairs are combined in any way.
30. Overall, the financial aspects of the relationship do not indicate that the parties are living together or have ever lived together or that their relationship is genuine and continuing.

HOUSEHOLD

31. The applicant claimed that he commenced living with the sponsor in a shared household after they were married on 5 February 2014 at Ingleburn. He stated they remained there for about two years before the sponsor moved to live with her parents in Mount Druitt. He claimed the reason for the sponsor moving to live with her parents was so that they could provide support for her child. He stated that she had been living with her parents for the last seven months although, if the parties only lived together at Ingleburn for two years, this would mean that the sponsor had been living with her parents for at least the last year.
32. There is nothing to indicate that at the time of the decision the parties are living together or that the arrangement where the sponsor continues to live with her parents and the applicant lives at a different residence is not a permanent arrangement.
33. The applicant claimed that the parties were living together at the time of the application. There is no information that indicates that the sponsor was ever living with the applicant at his home in Ingleburn. No documents have been provided addressed to the sponsor at the home at Ingleburn. The sponsor applied for a copy of her birth certificate to provide to the Department. This was issued on 15 May 2014, more than three months after the parties were married and claimed to have started living together. The certificate was sent to an address at St Clair. The applicant was not able to provide an explanation as to why, if the parties were living together, the sponsor would have arranged for her birth certificate to be sent to a home in St Clair. The fact that the certificate was sent to an address at St Clair and not where it was claimed they were living in Ingleburn indicates the sponsor was not living with the applicant at that time.
34. The sponsor has a child from a former relationship. There is no information which would indicate the applicant has at any time provided any care or support for that child. The applicant claimed that the sponsor was currently living with her parents so that she could have their assistance in looking after her child. This indicates that the applicant has not in the past and does not currently provide any assistance in the care of the sponsor's child.
35. Overall, there is little information to indicate that the applicant and the sponsor have ever lived together in a shared household. When considering the nature of the household, the Tribunal finds that the parties have not lived together at any time in a shared household and that they have continued to live apart on a permanent basis. The fact that the parties have not been able to provide any evidence of the parties sharing household together indicates the relationship is not genuine.

SOCIAL ASPECTS

36. The applicant provided statements from his friends that they believe the relationship is genuine. The statements do not provide any detailed analysis of the relationship or why they would consider the relationship is genuine. No statements have been provided by the sponsor's family which would indicate they believe the relationship is genuine. As the sponsor is currently living with her parents it would be expected that she has a close relationship with them and, if the parties were ever in a genuine relationship, they would have provided statements to support the application.
37. A limited number of photographs were provided by the applicant in support of the application. These show the party's wedding which, apart from the marriage celebrant, do not show anybody else attending and a limited number of photos of the applicant and the sponsor together with the people who provided the statutory declarations in support of their application. There are no photos of the parties with any other family members or any other people. There is no photo of the applicant with the sponsor's child. Although the photos indicate the parties have met and are known to each other, they do not indicate that the parties have engaged in his social activities together or that they represent themselves as being married.
38. Overall, there is little information which would indicate that the parties have ever genuinely represented themselves as being married to each other or that their relationship is recognised by their friends and family as being genuine. The applicant stated that the sponsor had been living with her parents for the last seven months, separate from him. There is no information that the parties have any plan to undertake any joint social activities in the future.

COMMITMENT TO EACH OTHER

39. The applicant advised the Tribunal that the sponsor would not be attending the first hearing organised by the Tribunal as the sponsor's child was "undergoing surgery". When the Tribunal asked for details of the medical condition of the sponsor's child and when the sponsor would be able to attend a postponed hearing, the applicant advised that the sponsor would now be able to attend the hearing. No information was provided which would indicate the sponsor's child had any medical condition or that he was due to have surgery on the day of the hearing. The sponsor attended the Tribunal, albeit two hours after the scheduled hearing time. This calls into question the claim that the sponsor's child was "undergoing surgery" on the day.
40. The sponsor failed to attend the postponed hearing before the Tribunal. The applicant claimed that this was because "the kid" was sick. The applicant was not able to provide details of how the sponsor's child was sick or why the sponsor was not able to attend the hearing by having the child cared for by someone else.
41. The fact that the sponsor did not attend the hearing indicates a lack of commitment by her as to the relationship.
42. In the application, it was claimed that the parties first met each other in July 2013 and were married on 5 February 2014. They have now been married for over three years. Despite this, little information has been provided which would indicate that the parties provide any degree of companionship or emotional support for each other. The applicant has claimed that the sponsor has been living for the last seven months with her parents. As indicated above, the Tribunal does not accept that the parties have ever lived together in a shared household. The fact that the sponsor has been living with her parents for at least for the last seven

months indicates the parties do not have a commitment to their relationship or that they consider their relationship is long-term.

43. There is little further information which would indicate the parties at any time had any genuine commitment to a relationship as husband and wife. The parties provided statements and documents to the Department in support of their application, however, no further documentation has been provided to the Tribunal which would indicate any continuing relationship. Overall, there is little information which would indicate that the parties have any commitment to the claimed relationship or indicates the relationship is genuine and continuing or that they have a mutual commitment to a shared life as husband and wife to the exclusion of all others.

OVERALL ASSESSMENT

44. The Tribunal has considered all the information before it both individually and cumulatively. The applicant provided little information to the Department when applying for the application to indicate the parties were in a genuine relationship. Apart from the statements given by the parties themselves and two friends of the applicant, there is little to indicate that the parties were in a genuine relationship at any time. They did not provide any clear information to indicate the parties are pooling their financial resources or have any shared financial arrangements.
45. There is significant information which indicate that the parties are not in a genuine relationship or have ever lived together. The fact that the sponsor's birth certificate was sent to an address different to where the parties were claiming to live together, the fact that the sponsor declined to attend the hearing before the Tribunal, the fact that the applicant has stated that the sponsor has not been living with him for the last seven months all indicate that the parties are not and have never been living in a genuine relationship. The applicant did not provide any further information to the Tribunal which would indicate that the parties were ever in a genuine relationship.
46. Taking all these factors into account, the Tribunal finds that the parties do not have a mutual commitment to a shared life to the exclusion of all others, that the relationship is not genuine and continuing and that the parties have always lived separately and apart on a permanent basis.
47. Given these findings the Tribunal is not satisfied that at the time the visa application was made and at the time of this decision the parties were in a spousal relationship.
48. Therefore the applicant does not meet cl.820.211(2)(a) and cl.820.221. There is no information before the Tribunal that the applicant would meet any of the alternate criteria in cl.820.211 or cl.820.221.

DOES THE APPLICANT MEET SCHEDULE 3 CRITERIA, OR SHOULD THOSE CRITERIA BE WAIVED?

49. The delegate who considered the application also considered whether the applicant met the Schedule 3 criteria and, if he did not, whether there were compelling reasons for not applying those criteria. The Tribunal has further considered this issue on the basis of accepting at face value the claims made by the parties that they were in a genuine and continuing relationship.
50. An applicant who is not the holder of a substantive visa at the time of application must meet certain criteria in Schedule 3 to the Regulations. With limited exceptions not relevant to this

case, he or she must satisfy Schedule 3 criteria 3001, 3003, and 3004 unless the Minister is satisfied that there are compelling reasons for not applying those criteria: cl.820.211(2)(d).

51. It is not in dispute that the applicant in the present case did not have a substantive visa at the time of application. As the applicant did not enter Australia as the holder of a Subclass 995 visa or special purpose visa, the issue in the present case is whether the applicant satisfies the Schedule 3 criteria unless there are compelling reasons for not applying those criteria.

CRITERION 3001

52. In order to satisfy criterion 3001, the application for the visa must have been lodged within 28 days of the relevant day. The 'relevant day' is defined in 3001(2). In the circumstances of the applicant, the relevant day is the last day when the applicant held a substantive visa.
53. The applicant last held a substantive visa on 13 November 2012. This was more than one year and eight months prior to the filing of the current application.
54. As the visa application was not made within 28 days of the relevant day, the applicant does not satisfy criterion 3001.

COMPELLING REASONS

55. As the Tribunal has found that the applicant does not meet the relevant Schedule 3 criteria, it is required to consider whether there are compelling reasons for not applying the criteria.
56. The expression 'compelling reasons' is not defined for these purposes. However, the reasons should be sufficiently convincing to move the decision-maker to exercise its discretion to waive the requisite criteria and the circumstances must be sufficiently powerful to lead a decision-maker to make a positive finding in favour of waiving the required criteria: *MZYPZ v MIAC* [2012] FCA 478 at [10]; *Babicci v MIMIA* (2005) 141 FCR 285 at [24]. Circumstances which constitute 'compelling reasons' for not applying the Schedule 3 criteria can arise at any time, including after the visa application is made: *Waensila v MIBP* [2016] FCAFC 32.
57. The applicant entered Australia on a Student visa. An application for a further Student visa was refused as the applicant did not meet the criteria for the grant of the Visa as he was not enrolled in any further studies. A review of this decision was unsuccessful. The applicant applied for Ministerial intervention. This application was not considered by the Minister. There appears to be no valid reason on which the applicant remained in Australia after he ceased any studies. It appears the applicant has manipulated his circumstances to be able to remain in Australia for no valid reason and there is no reason as to why the applicant did not hold a substantive visa would provide a compelling reason for not applying the Schedule 3 criteria.
58. The applicant has a good relationship with his parents and he speaks to them every day. The applicant did not provide any information that would indicate that his parents or any other family members have any difficulties in India or that he would face any problems if he were required to return to India. The applicant previously obtained financial support from his extended family members to be able to be granted his Student visa. There is no information to indicate that the applicant would not continue to be able to rely upon the support of his family if he were required to return to India.

59. There is nothing in the circumstances that the applicant would face if he were required to return to India to file any offshore Partner visa application which would provide a compelling reason for applying the Schedule 3 criteria.
60. As indicated above, for the purposes of the issue of whether there are compelling reasons for not applying the Schedule 3 criteria the Tribunal has not made any critical assessment of whether, at the time of the application or at the time of this decision, the parties were in and continue to be in a genuine, continuing and exclusive relationship. The Tribunal has accepted at face value the claims made by the parties that they were and continue to be in a genuine relationship together and the circumstances of that claimed relationship for the purposes of this decision.
61. The criteria in cl.820.211(2)(a) is that the applicant is the spouse or de facto partner of the sponsoring partner. This, in part, requires the applicant and the sponsor to be in a genuine, continuing and exclusive relationship. If an applicant does not hold a substantive visa and does not meet the Schedule 3 criteria, the requirement in cl.820.211(2)(d)(ii) to provide compelling reasons for not applying those criteria is in addition to the criteria in cl.820.211(2)(a). Accordingly, simply the fact that the parties are in a genuine and continuing relationship is not of itself a compelling reason for not applying the Schedule 3 criteria as it is already a criteria which must be satisfied in order to meet the criteria in cl.820.211(2)(a). If the relationship itself can be considered a compelling reason for not applying the Schedule 3 criteria, it must be the particular aspects of the relationship which must provide a compelling reason for not applying the Schedule 3 criteria and not simply the fact that the parties are in a relationship.
62. All parties in a genuine relationship where an application for a Partner visa is filed offshore must face some degree of emotional and financial hardship. This includes the period of separation while the Partner visa application is processed and the associated costs of separate households.
63. It was claimed by the applicant and the sponsor in statements provided to the Department that their relationship had grown over the last two years and the applicant had come to know the sponsor and her child better and they had become closer to him. Although this would be expected in any genuine relationship it does not, of itself, provide a compelling reason for not applying the Schedule 3 criteria, the applicant has provided no information which would indicate these claims are true.
64. The applicant has not provided any information which would indicate that the sponsor's child has any relationship with him at any time. No photos have been provided of the applicant with the sponsor's child, no information has been provided that the applicant has been involved in any of the child's activities and no information has been provided that the applicant has ever provided any care for the sponsor's child. The fact that the applicant stated that the sponsor had returned to live with her parents so that they could assist her in looking after her child indicates that the applicant was not providing any assistance to the sponsor for the care of her child.
65. The Tribunal is not satisfied that any of the claims made by the applicant as to his relationship with the sponsor's child has any merit or that this provides a compelling reason for not applying the Schedule 3 criteria.
66. The applicant claimed that the sponsor had been living with her parents for the last seven months. The applicant has been living with a friend in another home. It was claimed that the parties continue to see each other occasionally. The fact that the applicant has claimed that he has been living separately and apart from the sponsor for the last seven months indicates that even if the parties were in a genuine relationship they would be able to live separately

for a period of any offshore Partner visa application was being assessed. There is no information which would indicate that either the applicant or the sponsor is emotionally, financially or in any way dependent upon each other or that the applicant would not be able to return to India to file an offshore Partner visa application if the parties were in a genuine relationship as claimed.

67. The Tribunal is not satisfied that any aspect of the nature of the applicant's claimed relationship with the sponsor provides a compelling reason for not applying the Schedule 3 criteria.
68. When this issue was raised by the Tribunal with the applicant at the hearing, the only response given by the applicant for any compelling reasons for not applying the Schedule 3 criteria was that he did not want to leave Australia because he liked Australia and had been here for so many years. The Tribunal does not accept any of these reasons as providing a compelling reason for not applying the Schedule 3 criteria. The Tribunal finds that the applicant has manipulated his own circumstances to be able to remain in Australia. From the time the applicant stopped any study in Australia, he had no justifiable reason to remain in Australia and should have returned at that time to India. That he did not indicates the applicant is willing to ignore Australia's immigration laws for his own benefit.
69. The Tribunal has assessed the circumstances of the applicant and the sponsor both individually and cumulatively. As set out above, the Tribunal is not satisfied that the individual circumstances of the parties and in particular the claims made by the parties when considered on an individual basis provide a compelling reason for not applying the Schedule 3 criteria. The Tribunal is not satisfied that when considered in combination the total circumstances of the parties provide a compelling reason for not applying the Schedule 3 criteria.
70. The Tribunal is not satisfied that there are compelling reasons for not applying the Schedule 3 criteria. Accordingly, the applicant does not meet cl.820.211(2)(d)(ii). There is nothing before the Tribunal to indicate the applicant would meet any of the alternate criteria in cl.820.211.
71. The Tribunal is not satisfied that there are compelling reasons for not applying the Schedule 3 criteria. Accordingly, the applicant does not meet cl.820.211(2)(d)(ii).
72. For the reasons above, the applicant does not satisfy the criteria for the grant of the visa.

DECISION

73. The Tribunal affirms the decision not to grant the applicant a Partner (Temporary) (Class UK) visa.

Hugh Sanderson
Member

ATTACHMENT - EXTRACT FROM MIGRATION REGULATIONS 1994

1.15A SPOUSE

- (1) For subsection 5F (3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5F (2) (a), (b), (c) and (d) of the Act exist.
- (2) If the Minister is considering an application for:
 - (a) a Partner (Migrant) (Class BC) visa; or
 - (b) a Partner (Provisional) (Class UF) visa; or
 - (c) a Partner (Residence) (Class BS) visa; or
 - (d) a Partner (Temporary) (Class UK) visa;

the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).

- (3) The matters for subregulation (2) are:
 - (a) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day to day household expenses; and
 - (b) the nature of the household, including:
 - (i) any joint responsibility for the care and support of children; and
 - (ii) the living arrangements of the persons; and
 - (iii) any sharing of the responsibility for housework; and
 - (c) the social aspects of the relationship, including:
 - (i) whether the persons represent themselves to other people as being married to each other; and
 - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (iii) any basis on which the persons plan and undertake joint social activities; and
 - (d) the nature of the persons' commitment to each other, including:
 - (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons see the relationship as a long term one.
- (4) If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).